No. 96-219

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MARVIN NOEL,

Petitioner,

vs.

INTERNATIONAL CABLEVISION, INC. d/b/a ADELPHIA CABLE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER QUESTIONS PRESENTED

1. Whether petitioner failed to meet the jurisdictional requirement of this Court that he file a timely petition for a writ of certiorari where petitioner neglected to file the petition within 90 days after entry of the lower court's judgment, petitioner did not toll the running of this 90-day period by filing a timely petition for rehearing in the court below, and petitioner did not file any motion to extend the time within which to file his petition for a writ of certiorari in this Court?

2. Whether Section 605 of Title 47, United States Code, protects cable television operators against the sale and distribution of "pirate" descramblers used to steal cable programming services that originate as radio communications and are retransmitted by cable television operators over coaxial cable wiring?

STATEMENT PURSUANT TO RULE 29.6

Respondent International Cablevision, Inc. ("International Cablevision"), a corporation organized under the laws of New York, is a wholly-owned subsidiary of Chauncey Communications Corporation ("Chauncey"), a Delaware corporation. Chauncey is in turn wholly owned by Adelphia Communications Corporation, a publicly traded Delaware corporation. Respondent International Cablevision has no subsidiary company within the meaning of Rule 29.6 of the Rules of the Supreme Court of the United States.

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STATEMENT OF JURISDICTION

Section 2101(c) of Title 28, United States Code, invests this Court with jurisdiction provided a petition for a writ of certiorari is filed within 90 days of the entry of the judgment below. The judgment of the Court of Appeals for the Second Circuit was entered on January 26, 1996 and the mandate issued on February 16, 1996. On March 1, 1996, more than 14 days following the entry of the judgment, petitioner belatedly submitted a petition for rehearing, which the clerk in the court below rejected as untimely. After petitioner filed a motion, dated March 7, 1996, for an extension of time within which to file his petition for rehearing, the Second Circuit, by order dated March 29, 1996, granted this out-of time motion "to the extent that the petition for rehearing may be filed" and expressly refused to recall the mandate. (R.A. at 7).[1] On May 10, 1996, the lower court denied the petition for rehearing without reviewing the merits of the underlying judgment. (A. at 51). On August 8, 1996, exactly 90 days after the May 10 order, and more than 190 days after the lower court's entry of judgment on January 26, petitioner belatedly filed the petition for a writ of certiorari.

ADDITIONAL STATUTORY PROVISION

Section 2101(c) of Title 28, United States Code provides as follows:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the

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1. References to respondent's appendix will be in the form (R.A. at __) and references to petitioner's appendix will be in the form (A. at __).

> Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

COUNTER STATEMENT OF THE CASE

On two separate occasions in April 1991, petitioner sold a "pirate" cable descrambler, more commonly known as a black box, to undercover investigators employed by respondent. (A. at 29). "Pirate" cable descramblers allow subscribers with basic cable service to obtain "premium" channels, such as HBO or Showtime, without paying the correspondingly higher fees. During the first sale on April 9, 1991, petitioner asserted that he did not make money from selling descramblers but "just like[d] to screw the cable company." (A. at 47). Later on April 18, 1991, petitioner sold a second descrambler to undercover investigators, and in a taped conversation of the sale, explained how to connect the descrambler, warned the investigators to hide the descrambler from the cable company as it was "illegal," and admitted to selling a few other descramblers.[2] (A. at 29-30, 46 n.7).

To halt this unlawful conduct, respondent commenced an action in the United States District Court for the Western District of New York against petitioner, seeking damages and injunctive relief under sections 553 and 605 of the Cable Communications Policy Act of 1984 (the "1984 Act"). (A. at 27). Statutory damages under section 553 range from a minimum of $250 to a maximum of $10,000, 47 U.S.C. § 553(a)(1) and (c)(3)(A)(ii), and under section 605, range from a minimum of $10,000 to a maximum of $100,000. 47 U.S.C. § 605(a), (e)(3)(C)(i)(II).

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2. For a fuller recitation of the facts, respondent refers the Court to the opinion below. (A. at 11-14).

The district court granted respondent's motion for summary judgment on the section 553 claim, fixing respondent's statutory damages at $250. (A. at 44, 46). However, the district court granted petitioner's motion to dismiss respondent's section 605 claim, ruling that the proscriptions of section 605 did not extend to the retransmission of cable television programming over coaxial cables, and therefore did not apply to petitioner's unlawful conduct. (A. at 42, 44).

The Second Circuit vacated the district court's erroneous decision on January 26, 1996, and remanded the case for the imposition of the enforcement remedies available under section 605. (A. at 26). In reversing the district court, the Second Circuit engaged in a painstaking study of section 605, which included analysis of pertinent provisions of the 1984 Act, the Communications Act of 1934 (the "1934 Act"), and amendments to the 1934 Act in 1968; examination of the legislative history of the 1984 Act; and review of judicial interpretations of section 605, both prior to and after the passage of the 1984 Act. The Second Circuit then concluded that because respondent's distribution of cable television programming involved the receipt of radio signals by satellite, "the continued transmission of radio signals via cable . . . can be regarded as the 'receipt, forwarding, and delivery of [radio] communications . . . incidental to [the transmission]' . . . within the meaning of [the pertinent definitional section of 1984 Act, 47 U.S.C.] § 153(b)." (A. at 10, 20). Accordingly, the Second Circuit held that section 605 applied to the "distribution of descramblers for the interception of cable television . . . and therefore to the conduct of . . .[petitioner] Noel that is at issue on this appeal." (A. at 24).

REASONS FOR DENYING THE WRIT

The petition does not merit this Court's consideration. First, petitioner has failed to satisfy the jurisdictional requirement of

Section 2101(c) of Title 28, United States Code, that his petition be filed within 90 days of the entry of judgment. By failing to file the petition for a writ of certiorari within 90 days of the entry of the lower court's judgment, by neglecting to file a timely petition for rehearing in the court below, and by not moving in this Court to extend the time within which to file his petition, petitioner can no longer seek to invoke the jurisdiction of this Court.

In addition, there are no "compelling reasons" warranting this Court's consideration of the instant case. *See* Sup. Ct. R. 10. The conflict between the Second and Seventh Circuits is based upon a narrow issue of statutory construction, and its only practical effect is to permit different penalties to apply to what is concededly unlawful activity. This conflict does not subject cable companies or cable "pirates" to contradictory mandates. Nor does it provide companies that do business in several judicial circuits, such as respondent, with intolerably uncertain guidance in the conduct of their business affairs. The question presented would also benefit from insights provided by lower courts that may consider this issue. Finally, the Second Circuit fully considered and correctly resolved the issues presented.

I.

THE PETITION IS JURISDICTIONALLY DEFECTIVE.

For a petitioner to clothe this Court with jurisdiction, he must file his petition for a writ of certiorari "within ninety days after the entry of [the] judgment," 28 U.S.C. § 2101(c), unless the petitioner either filed a "timely" petition for rehearing in the lower court, Sup. Ct. R. 13.3, or moved for an extension of time to file his petition for a writ of certiorari in this Court, Sup. Ct. R. 13.5. As petitioner here met none of these jurisdictional requirements, his petition for a writ of certiorari should be denied.

Section 2101(c), of Title 28, United States Code, supplies the general rule governing the filing of certiorari petitions in civil cases and invests this Court with jurisdiction only when a petitioner files the petition "within ninety days after the entry of [the] judgment . . . ."[3] "This 90-day limit is mandatory and jurisdictional." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990). By filing his petition for a writ of certiorari on August 8, 1996, more than 190 days after the entry of the judgment on January 26, 1996, petitioner has failed to satisfy this 90-day jurisdictional rule.

Petitioner also did not file a timely petition for rehearing in the court below, which would have tolled the start of the 90-day period. *See* Sup. Ct. R. 13.3. A *timely* petition for rehearing suspends the finality of the underlying judgment until either the denial of the petition for rehearing or the subsequent entry of judgment upon the grant of a rehearing. *See* Sup. Ct. R. 13.3; *Missouri v. Jenkins*, 495 U.S. at 46 (1990); *Department of Banking v. Pink*, 317 U.S. 264, 266 (1942).

The court below entered its judgment on January 26, 1996. Pursuant to Fed. R. App. Proc. 40, petitioner had 14 days from the "entry of judgment," or until February 9, 1996, within which to file a timely petition for rehearing, a deadline that petitioner failed to meet by not submitting any petition for rehearing until March 1, 1996. When the lower court rejected this petition for rehearing as untimely, counsel for petitioner moved, on March 7, 1996, to enlarge the time within which to file the petition for rehearing, claiming that his tardiness stemmed from his erroneous belief that the 14-day period ran from the issuance of

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3. To invoke the jurisdiction of this Court, petitioner cites to only one provision, 28 U.S.C.§ 1254 (*see* Petition at 1), a statute which merely recites that this Court may review decisions of the Courts of Appeals by means of a writ of certiorari. Petitioner omits any reference to 28 U.S.C. § 2101(c), which reference would, if made, alert this Court to the 90-day jurisdictional time limit. *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990).

the mandate on February 16, 1996. By order dated March 29, 1996, the lower court granted the out-of-time motion "to the extent that the petition for rehearing may be filed" and expressly refused to recall the mandate. (R.A. at 7). On May 10, 1996, the lower court denied the petition for rehearing, (A. at 51), and on August 8, 1996, petitioner filed his petition for a writ of certiorari.

Only if the 90-day filing period began to run anew from the lower court's denial of the untimely petition for rehearing would the petition before this Court be timely. An untimely petition for rehearing generally does not toll the running of time for filing a petition for a writ of certiorari. *Pfister v. Northern Ill. Fin. Corp.*, 317 U.S. 144, 150-51 (1942). The sole exception to this well-established rule occurs when the petitioner can demonstrate that the court below entertained or considered the untimely petition for rehearing on its merits. *See Federal Power Comm'n v. Idaho Power Co.*, 344 U.S. 17, 21 n.1 (1952) (petition for certiorari filed within 90 days of lower court's second judgment was timely where untimely motion for clarification was entertained and considered on the merits and the original judgment was modified); *Bowman v. Loperena*, 311 U.S. 262, 265-66 (1940) (petition for rehearing filed out of time but entertained by the court and dealt with upon its merits enlarged the time for taking an appeal).

In this case the court below denied the petition for rehearing without any apparent reexamination of the grounds for its original order.[4] Indeed, by not recalling its mandate, the lower

4. In *Pfister*, this Court concluded that an order denying a petition for rehearing on the merits would show "a refusal to modify the original order." 317 U.S. at 150-51. The Court therefore held that the lower court had not entertained or considered the merits of a petition for rehearing where the order denying the petition stated "there is no equity or merit in the petition for rehearing." *Id.* at 151.

court clearly signaled that it did not mean to disturb the finality of its prior judgment. Thus, the legal rights and obligations of the parties and the finality of the judgment for purposes of review were fixed well before the lower court's denial of the petition for rehearing. *See Department of Banking v. Pink*, 317 U.S. 264, 266-67 (1942) (post-judgment motion that did not suspend the finality of the judgment did not toll the running of the period in which to file a petition for certiorari). Petitioner cannot establish, therefore, that the denial of the petition for rehearing extended petitioner's time to appeal beyond 90 days following the entry of the January 26, 1996 judgment. *Pfister* at 150.

Petitioner also did not file a motion in this Court to extend the time period within which to file the petition for a writ of certiorari. *See* 28 U.S.C. § 2101(c); Sup. Ct. R. 13.5. Thus, having taken no steps to avoid the rigors of the 90-day rule, petitioner cannot now invoke this Court's jurisdiction by filing a tardy petition.[5] Accordingly, the petition for a writ of certiorari should be denied.

II.

PETITIONER HAS FAILED TO PRESENT COMPELLING REASONS THAT WOULD JUSTIFY THE GRANT OF A WRIT OF CERTIORARI.

In urging this Court to grant certiorari, petitioner makes a solitary argument — a conflict between the Second and Seventh

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5. Additionally, since counsel's "mistake" in determining when to file his petition for rehearing cannot qualify as "good cause," under Fed. R. App. Proc. 26(b), *see Shumar v. United States*, 423 U.S. 879, 881 (1975) (Douglas, Brennan, and Marshall, JJ., dissenting from denial of certiorari) ("If the good-cause requirement of Rule 26(b) possesses any meaning at all, the inadvertence of a litigant cannot qualify as good cause"), the lower courts grant of leave to file the petition out of time was groundless and therefore, the petition for rehearing was totally ineffective with respect to that court's original order.

Circuits regarding the issue of whether section 605 applies to the transmission of radio transmissions over coaxial cables needs to be resolved. (Petition at 6-7). This solitary factor provides the Court with no "compelling reason" to grant certiorari.

A. The Asserted Conflict Is Tolerable And Review By This Court Would Be Premature.

Not all conflicts between circuits need to be resolved by this Court. "Some conflicts are tolerable. Others can be resolved more effectively by Congress." *Hiersche v. United States*, 503 U.S. 923, 925 (1992) (Stevens, J., respecting the denial of certiorari). The apparent conflict in the instant case is eminently "tolerable." Confined to two circuits, the existing conflict merely allows different penalties to apply to conduct which all parties concede is unlawful. The conflict does not subject any party to conflicting statutory commands, nor does it create intolerably uncertain guidance concerning the affairs of businesses operating in several judicial circuits. Thus, this conflict, which is narrow both in terms of the number of circuits involved and its practical consequences, need not be resolved by the Court at this time. *See, e.g., Walker v. United States*, 506 U.S. 967 (1992) (certiorari denied despite recognized conflict among eight of the federal courts of appeal); *Randolph Cent. Sch. Dist. v. Aldrich*, 506 U.S. 965 (1992) (certiorari denied despite acknowledged conflict among five of the federal courts of appeal).

This Court's review of the narrow statutory construction issue presented should be deferred to permit other courts of appeals "to weigh in on one side or another of the unsettled issue . . . ." *Beaulieu v. United States*, 497 U.S. 1038, 1039 (1990) (White J., dissenting from denial of certiorari). Indeed, as Justice Stevens has noted:

> experience with conflicting interpretations of federal rules may help to illuminate an issue before it is finally resolved and thus may play a constructive role in the lawmaking process. The doctrine of judicial restraint teaches us that patience in the judicial resolution of conflicts may sometimes produce the most desirable result.

Justice Stevens, *Some Thoughts on Judicial Restraint,* 66 Judicature 177, 183 (1982). Thus, for this Court to address the issue now without the benefit of the views of these other courts would be premature, unwarranted, and inconsistent with this Court's well-established "policy of letting tolerable conflicts go unaddressed until more than two courts of appeals have considered a question." Justice Brennan, *Some Thoughts on the Supreme Court's Workload*, 66 Judicature 230, 233 (1983). *See also McCray v. New York,* 461 U.S. 961, 963 (1983) (Stevens, Blackmun, Powell, JJ., respecting the denial of certiorari) (recognizing that "it is a sound exercise of discretion for the Court to allow the various States to serve as laboratories in which the issue receives further study before it is addressed by this Court").

B. The Decision Below Was Correct.

In addition, because the Second Circuit correctly decided the statutory construction issue, no manifest injustice will result from the decision below. The pivotal question, as phrased by the court below, was "whether the descramblers sold by . . . [petitioner] Noel were intended to be used to 'receive . . . any . . . communication by radio' within the meaning of the third sentence of § 605(a), an inquiry that requires examination of the definition of 'communication by radio' in [the definitional section of the 1984 Act, 47 U.S.C.] § 153(b)." (A. at 15).

Recognizing that respondent simultaneously retransmits satellite-delivered cable television program signals to its customers, the lower court held that:

> [t]he continued transmission of radio signals via cable after their receipt at the headend of a cable television system can be regarded as the "receipt, forwarding, and delivery of [radio] communications . . . incidental to [the transmission]" of the pictures and sounds transmitted by those communications within the meaning of §153(b).

(A. at 20).

The lower court's decision is amply supported by the legislative history of the 1984 Act, pre-1984 decisions that consistently interpreted section 605 as prohibiting the interception of cable television programming, and post-1984 decisions that have held section 605 applicable to the conduct at issue in this case.

Among the legislative history relied upon was House Report No. 934, 98th Cong., 2d Sess. 83 (1984), *reprinted in* U.S.C.C.A.N. 4655, 4720, which discussed the newly enacted section 553. The Second Circuit reviewed this Report, which reads in part:

> [e]xisting section 605 of the Communications Act of 1934 includes a prohibition against the unauthorized reception of communications services. *Nothing in [§ 553] is intended to affect the applicability of existing Section 605 to theft of cable service, or any other remedies*

> *available under existing law for theft of service.*

(A. at 21) (emphasis in opinion). The Second Circuit concluded that "in view of the uniform prior judicial interpretation of § 605 as applicable to the theft of cable service, the . . . emphasized passage . . . was intended to make clear that § 605 would continue to be so applicable." (A. at 22).

The Second Circuit's conclusion was further buttressed by the statement of Senator Robert W. Packwood, chairman of the Senate Committee on Commerce, Science and Transportation, the committee responsible for the 1984 Act:

> H.R. 4103 as reported by Committee recodifies without modification section 605 to the Communications Act of 1934 as new section [605](a). *In amending existing section 605, it is intended to leave undisturbed the case law that has developed confirming the broad reach of section 605 as a deterrent against piracy of protected communications.* Over the years federal courts, consistent with congressional intent, have recognized that section 605 provided broad protection against the unauthorized interception of various forms of radio communications. *It is the Committee's intention* that the amendment preserve these broad protections; *that all acts which presently constitute a violation of present 605 shall continue to be unlawful under that section as amended and redesignated by H.R. 4103.*

(A. at 23) (emphasis in opinion). Senator Packwood's statement emphasized the point made in the House Report — that Congress expected 605 to continue its role in combatting cable signal piracy and intended the overlap between the coverage of section 605 and that of section 553.

In *United States v. Norris*, 88 F.3d 462 (7th Cir. 1996), the Seventh Circuit did not adopt the Second Circuit's interpretation of the statutory scheme, nor its determination that the continued transmission of radio signals via cable does not change the nature of the communication. The Seventh Circuit concluded instead that section 605 did not extend to the retransmission of radio communications over coaxial cables because it decided that radio transmissions cease being radio communications and become wire communications at the discrete point at which they are retransmitted by coaxial cables. 88 F.3d at 467-68.

The Seventh Circuit's dichotomy between radio and wire communications is false. First, in *United States v. Southwestern Cable Co.*, 392 U.S. 157, 169 (1968), this Court held that the simultaneous retransmission of radio communications is a "stream of communication [that] is essentially uninterrupted and properly indivisible." Second, the definitions of wire and radio communications are not mutually exclusive. As the Second Circuit emphasized, the statutory definition of radio communications includes "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." (A. at 15, quoting 47 U.S.C. § 153(b)). The Second Circuit acknowledged the obvious statutory overlap, but appropriately noted that "[a]lthough the resulting interplay and overlap between §§ 553 and 605 may not demonstrate 'a convenient and inviting sense of order,' (citation omitted) it is for Congress, not the courts to address any perceived resulting disorder (citation omitted)." (A. at 25).

In conclusion, the Second Circuit, in view of the broad definitional language of section 153(b), the uniform judicial authority prior to 1984 holding section 605 applicable to cable communications, and pertinent legislative history, correctly concluded that Congress intended section 605 to apply to the retransmission of cable television programming over coaxial cable where such programming originated as radio communications. Thus, the conflict between the Second and Seventh Circuits presents this Court with no "compelling reason[ ]" to review the decision below. *See* Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A
NOTICE OF MOTION FILED MARCH 7, 1996

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion must be accompanied
by supporting affidavit (Local Rule)

Docket No. 94-7887, 7889

NOTICE OF MOTION

for *Withdrawal and Mandate and Enlargement of Time to File Petition For Rehearing*

International Cable

v.

Sykes

International Cable

v.

Noel

MOTION BY:

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Appendix A

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Has consent of opposing counsel:

A. been sought?	☒ Yes	☐ No
B. been obtained?	☐ Yes	☒ No
Has service been effected?	☒ Yes	☐ No
Is oral argument desired? *(Substantive motions only)*	☐ Yes	☒ No

* * *

Has argument date of appeal been set:

A. by scheduling order?	☒ Yes	☐ No
B. by firm date of argument notice?	☒ Yes	☐ No

C. If Yes, enter date: *original appeal was argued May 17, 1995*

Judge or agency whose order is being appealed: *Hon. John T. Curtin, United States District Judge, W.D.N.Y.*

Appendix A

Brief statement of the relief requested: *Withdrawal of mandate and enlargement of time for filing Petition for Rehearing.*

* * *

By: s/ *Rodney O. Personius*
Rodney O. Personius, Esq.

Appearing for:
Noel and Sykes

Date
March 6, 1995

Appellees:
☐ Plaintiff ☑ Defendants

Previous requests for similar relief and disposition: *N/A*

Statement of the issue(s) presented by this motion: *Should the mandate be withdrawn and the time for filing a petition for rehearing enlarged?*

Brief statement of the facts: *On January 26, 1996, a panel of this Court vacated and remanded the District Court's determination. Counsel for defendants-appellees mistakenly understood that the issuance of the mandate constituted the entry of "Judgment" for purposes of Federal Rule of Appellate Procedure 40(a). Although counsel was provided with a copy of the opinion of the Court, no notice of entry of judgment was received. A Petition for Rehearing was then filed within 14 days of the date upon which the mandate was issued, again under the mistaken understanding issuance of the mandate constituted*

entry of judgment. As such, the Petition for Rehearing was submitted to the Court for filing on March 1, 1996.

Summary of the argument: *Counsel for defendants-appellees prepared and submitted for filing a Petition for Rehearing upon the good faith, albeit mistaken, belief that the 14 day time period for filing such a petition was to be measured from the date the mandate was issued. This incorrect understanding was premised upon the belief the mandate constituted the "Judgment" of the Court. Counsel believes the Petition raises a meritorious issue of statutory construction under Title 47 in relationship to the statutory definitions of wire communications and radio communications under Section 153 of that statute. The identical issue is now pending before the Seventh Circuit Court of Appeals in the matter captioned United States of America v. William C. Norris, Dkt. No. 95-1402. As the matter has been vacated and remanded to the District Court it is not believed the granting of this request for a withdrawal of the mandate and enlargement of the time for filing a Petition to March 1, 1996 will work any prejudice on plaintiff-appellant. The sole issue to be determined upon remand concerns the assessment of penalties and costs in favor of plaintiff-appellant.*

APPENDIX B
ORDER FILED MARCH 29, 1996

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Each motion must be accompanied
by supporting affidavit (Local Rule)

Docket No. 94-7887, 7889

ORDER

for *Withdrawal and Mandate and Enlargement of Time to File Petition For Rehearing*

International Cable

v.

Sykes

International Cable

v.

Noel

MOTION BY:

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Appendix B

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Has consent of opposing counsel:

A. been sought? ☒ Yes ☐ No

B. been obtained? ☐ Yes ☒ No

Has service been effected? ☒ Yes ☐ No

Is oral argument desired? ☐ Yes ☒ No
(Substantive motions only)

* * *

Has argument date of appeal been set:

A. by scheduling order? ☒ Yes ☐ No

B. by firm date of argument notice? ☒ Yes ☐ No

C. If Yes, enter date: *original appeal was argued May 17, 1995*

Judge or agency whose order is being appealed: *Hon. John T. Curtin, United States District Judge, W.D.N.Y.*

Appendix B

Brief statement of the relief requested: *Withdrawal of mandate and enlargement of time for filing Petition for Rehearing.*

* * *

IT IS HEREBY ORDERED that the motion be and it hereby is granted to the extent that the petition for rehearing may be filed. The mandate will not be recalled.

s/ Frank X. Altimari
s/ J. Daniel Mahoney
s/ John M. Walker Jr.

March 29, 1996

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED MARCH 29, 1996
GEORGE LANGE III, CLERK